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DOMESTIC RELATIONS

Determination of Paternity: Amend Article 3 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, Relating to Determination of Paternity, so as to Revise Provisions Relative to Paternity Testing in Certain Cases; Provide for Reimbursement of Paternity Testing Costs Incurred by the Department of Human Services; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 19-7-43, -45, -54 (amended)
BILL NUMBER:	HB 568
ACT NUMBER:	252
GEORGIA LAWS:	2015 Ga. Laws 1433
SUMMARY:	The Act requires the Georgia Department of Human Services to order genetic testing in cases where paternity is contested. The Act also provides that no genetic testing should be undertaken if the applicant for services or other alleged parent adopted the child or the child was conceived through artificial insemination. Finally, the Act codifies specific laboratory standards for the genetic tests and requires destruction of the genetic material used in paternity testing.
EFFECTIVE DATE:	July 1, 2015

History

Child support enforcement is an important aspect of the State's ability to assist needy families.¹ In fact, "child support payments

1. Jaimie Johnson, *Domestic Relations: Alimony and Child Support Generally*, 14 GA. ST. U. L. REV. 121, 124–25 (1997).

reduce the poverty rate of single mothers by [twenty-five] percent.”² Because many welfare recipients are single parents, the non-custodial parent’s child support payments often have a cumulative effect on the welfare system.³ “According to the United States Department of Health and Human Services, there were 15,588,775 open child support cases in the United States in 2013”⁴ Out-of-wedlock births in the United States have increased from 89,500 a year in 1940 to more than 1.5 million a year by 2005.⁵

In Georgia, the Department of Human Services (DHS), Division of Child Support Services (DCSS) assists families in need of assistance with collecting child support payments.⁶ As of November 2014, the DCSS has 396,640 open cases, representing 533,252 children.⁷ The DCSS distributed \$704.5 million to recipients in 2014.⁸ Any family may apply for DCSS services, which include locating non-custodial parents, establishing paternity, establishing and enforcing child support orders, and collecting and distributing support payments.⁹

A critical component to the child support process is establishing paternity because the non-custodial parent is the father in the majority of cases.¹⁰ Paternity establishment means naming a “legal father” for a child.¹¹ Federal law requires state agencies to provide an expedited process to establish paternity.¹² The process requires

2. Bill Reagan, *Child Support Payments Make Big Difference*, VALLEY MORNING STAR (Mar. 13, 2015), http://www.valleymorningstar.com/life/reagan_on_service/article_2e8ae4b0-c9fc-11e4-b4df-1fe54b02df40.html.

3. Johnson, *supra* note 1, at 125.

4. Reagan, *supra* note 2. The United States Department of Health and Human Services reported these statistics. *Id.* The most recent data was gathered in 2013. *Id.* The cases represent nearly 17 million children. *Id.*

5. Paula A. Monopoli, *Nonmarital Children and Post-Death Parentage: A Different Path for Inheritance Law?*, 48 SANTA CLARA L. REV. 857, 857 (2008).

6. GA. DEP’T OF HUMAN SERVS., DIV. OF CHILD SUPPORT SERVS., FACT SHEET, <http://dhs.georgia.gov/sites/dhs.georgia.gov/files/2014%20DCSS%20Fact%20Sheet%20Rev%20November%202014%5B1%5D.pdf> (last updated Nov. 2014) [hereinafter DCSS, FACT SHEET].

7. *Id.*

8. *Id.* In 2013, Georgia ranked 30th in the nation in the percentage of parents current on their child support payments. *Id.* This ranking is an improvement from Georgia’s rank of 47th in 2006. *Id.*

9. *Id.* Typically, families must pay a \$25 application fee, “but services are free for recipients of Temporary Assistance for Needy Families (TANF) and Family Medicaid.” *Id.*

10. *Id.* (noting that 91% of non-custodial parents owing child support in Georgia are fathers).

11. GA. DEP’T OF HUMAN SERVS., DIV. OF CHILD SUPPORT SERVS., PATERNITY ESTABLISHMENT FREQUENTLY ASKED QUESTIONS, http://dhs.georgia.gov/sites/dhs.georgia.gov/files/PaternityEstablishmentFAQ_10-23-13_FINAL.pdf (last updated Oct. 23, 2013).

12. 45 C.F.R. § 302.70(a)(2) (2015).

parties to participate in genetic testing and allows procedures for voluntary acknowledgment of paternity.¹³ In contested cases where the DHS seeks to establish paternity, the Office of State Administrative Hearings (OSAH), superior courts, and state courts have jurisdiction.¹⁴

In 2001, a father claimed that Georgia's paternity statute was unconstitutional because it treated men and women differently in violation of equal protection by allowing a mother, but not a father, to sue to establish paternity.¹⁵ The Supreme Court of Georgia held that the paternity statute was constitutional and did not violate equal protection because fathers and mothers of illegitimate children were not similarly situated.¹⁶ The statute actually remedied a disparity under common law in which a duty to support was placed on the mother but not the father.¹⁷ The Supreme Court of Georgia recognized a legitimate legislative effort to remedy a common problem: unwed mothers raising illegitimate children without the support of the father.¹⁸

Ultimately, DNA testing has proved the most accurate way to determine paternity, and approximately 20% of the DNA tests conducted by the DCSS exclude the man initially named as the father.¹⁹ This high percentage means that many men, who were not biological fathers, were paying child support and the actual fathers may not even know of their children.²⁰ Though DNA testing is the most accurate way to determine paternity, it has not been mandatory in new child support cases.²¹

13. 45 C.F.R. § 302.70(a)(5) (2015).

14. O.C.G.A. § 19-7-40 (2015).

15. *Palmer v. Bertrand*, 273 Ga. 475, 475, 541 S.E.2d 360, 361 (2001). “[Defendant] contends that the paternity statutes create an improper gender-based classification that permits a male to be adjudged to be the father of a child and ordered to make corresponding child support payments, without according him the same parental rights which automatically inure to the mother of that same child.” *Id.*

16. *Id.*

17. *Palmer*, 273 Ga. at 475, 541 S.E.2d at 362.

18. *Palmer*, 273 Ga. at 475, 541 S.E.2d at 361.

19. Video Recording of House Juvenile Justice Committee, Mar. 10, 2015 at 2 min., 46 sec. (remarks by Rep. Katie Dempsey (R-13th)), http://media.legis.ga.gov/hav/15_16/2015/committees/juvJust/juvJust031015EDITED.wmv [hereinafter House Video].

20. *See id.*

21. *Id.*

*Bill Tracking of HB 568**Consideration and Passage by the House*

Representatives Katie Dempsey (R-13th), Tom Weldon (R-3rd), Mary Margaret Oliver (D-82nd), Wendell Willard (R-51st), Alex Atwood (R-179th), and David Wilkerson (D-38th) sponsored House Bill (HB) 568.²² The House read the bill for the first time on March 5, 2015.²³ It read the bill for the second time on March 9, 2015.²⁴ Speaker David Ralston (R-7th) assigned the bill to the House Juvenile Justice Committee, which recommended several cosmetic changes²⁵ and favorably reported the bill by substitute on March 11, 2015.²⁶

The House read the bill for the third time on March 13, 2015,²⁷ and adopted a substantive floor amendment proposed by Representatives Weldon and Andrew Welch (R-110th), to which Representative Dempsey, the bill's author, also agreed.²⁸ The adopted floor amendment focused on the privacy concern raised by DNA testing.²⁹ The amendment inserted provisions to (1) prevent written results of genetic tests from being attached to any pleading or court order, (2) require destruction of collected genetic material within six months of a final paternity order, (3) require the recipients of genetic material to provide written notice to the tested individuals within thirty days of the destruction of the material, (4) prevent unauthorized sharing of collected genetic material, and (5) create a cause of action for violations of Code section 19-7-45, which would contain these provisions.³⁰ The House passed the Committee substitute as amended by a vote of 169 to 0.³¹

22. HB 568, as introduced, 2015 Ga. Gen. Assem.; *see also* Georgia General Assembly, HB 568, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/568>.

23. State of Georgia Final Composite Status Sheet, HB 568, May 14, 2015.

24. *Id.*

25. House Video, *supra* note 19, at 35 min., 44 sec. (remarks by Rep. Regina Quick (R-117th)).

26. State of Georgia Final Composite Status Sheet, HB 568, May 14, 2015.

27. *Id.*

28. HB 568 (HCSFA), § 2, p. 3–4, ln. 84–102, 2015 Ga. Gen. Assem.

29. *See* Interview with Rep. Katie Dempsey (R-13th) (June 5, 2015) [hereinafter Dempsey Interview].

30. HB 568 (HCSFA), § 2, p. 3–4, ln. 84–102, 2015 Ga. Gen. Assem.

31. Georgia House of Representatives Voting Record, HB 568 (Mar. 13, 2015).

Consideration and Passage by the Senate

Senator Dean Burke (R-11th) sponsored HB 568 in the Senate.³² The Senate read the bill for the first time on March 18, 2015, and it was assigned to the Senate Judiciary Committee.³³ The Committee favorably reported the bill by substitute on March 26, 2015.³⁴ The Committee substitute weakened the earlier changes Representative Weldon's amendment created by (1) deleting the subsection requiring written notice of the genetic material's destruction, (2) deleting the subsection creating a cause of action, and (3) changing the length of time for required destruction of genetic material from six months to a reasonable amount of time as determined by the DHS.³⁵ Representatives Weldon, Welch, and Dempsey were all amenable to these changes.³⁶ Senator Charlie Bethel (R-54th), a member of the Senate Judiciary Committee, suggested that the proposed creation of a new cause of action might be redundant.³⁷ Representative Dempsey suggested, after discussions with the DHS, that some situations may warrant keeping the genetic material for longer than the arbitrary deadline of six months.³⁸ Even after these changes, the bill still would prohibit attachment of genetic tests to pleadings or court orders, require destruction of genetic material, and prohibit the unauthorized sharing of that material with other persons or entities.³⁹

The Senate read the bill for the second time on March 26, 2015.⁴⁰ It was tabled on March 31, 2015.⁴¹ The bill was taken from the table and read for the third time in the Senate on April 2, 2015.⁴² On the

32. Georgia General Assembly, HB 568, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/568>.

33. State of Georgia Final Composite Status Sheet, HB 568, May 14, 2015.

34. *Id.*

35. *Compare* HB 568 (SCS), § 2, p. 3, ln. 84–90, 2015 Ga. Gen. Assem., *with* HB 568 (HCSFA), § 2, p. 3–4, ln. 84–102, 2015 Ga. Gen. Assem.

36. Dempsey Interview, *supra* note 29.

37. *See* Telephone Interview with Sen. Charlie Bethel (R-54th) (May 29, 2015) [hereinafter Bethel Interview].

38. *See* Dempsey Interview, *supra* note 29.

39. HB 568 (SCS), § 2, p. 3, ln. 84–90, 2015 Ga. Gen. Assem.

40. State of Georgia Final Composite Status Sheet, HB 568, May 14, 2015.

41. *Id.*

42. *Id.*

same day, the Senate adopted the Committee substitute and passed HB 568 by a vote of 47 to 0.⁴³

Reconsideration and Passage by the House

On April 2, the House agreed to the Senate Judiciary Committee substitute to HB 568 by a vote of 167 to 0.⁴⁴ The House sent the bill to Governor Nathan Deal (R) on April 8, 2015.⁴⁵ Governor Deal signed HB 568 into law on May 12, 2015.⁴⁶

The Act

Purpose

The Act amends Title 19 of the Official Code of Georgia Annotated with the purpose of revising provisions regarding paternity testing in certain cases, providing for reimbursement of paternity testing costs incurred by the DHS, providing for the privacy of written paternity results and collected genetic material, and providing for procedure in motions to set aside determinations of paternity.⁴⁷

The author of the Act, Representative Katie Dempsey (R-13th), sought to enhance the paternity establishment process by “requiring DNA testing in new child support cases . . . to end wrongful paternity claims prior to legal action.”⁴⁸ The Act ensures that an alleged father is not wrongfully required to submit child support payments until paternity is in fact established.⁴⁹ This avoids the potential of jailing or sanctioning individuals who are in child support arrears when they are not the biological “parent of the child in question.”⁵⁰

43. Georgia Senate Voting Record, HB 568 (Apr. 2, 2015).

44. Georgia House of Representatives Voting Record, HB 568 (Apr. 2, 2015).

45. State of Georgia Final Composite Status Sheet, HB 568, May 14, 2015.

46. *Id.*

47. 2015 Ga. Laws 1433, at 1433–34.

48. Jeremy Stewart, *House Bill 568 Would Require DNA Test for Child Support*, ROME NEWS-TRIB. (Mar. 13, 2015), http://www.northwestgeorgianews.com/rome/news/local/house-bill-would-require-dna-test-for-child-support/article_60b734ba-c93f-11e4-ba3d-7b19ecda16b5.html. This requirement allows the DHS to establish paternity before a court order is entered. *Id.*

49. *Id.*

50. *Id.* (statement of Rep. Katie Dempsey (R-13th)).

Section 1 – Relating to Petitions for Paternity Determinations

Section 1 of the Act amends Code section 19-7-43, relating to petitions for determination of paternity, by changing several subsections.⁵¹ First, Section 1 mandates that the DHS order genetic testing when the DHS is involved in the collection of child support for cases in which the paternity of a child is not established, or the individual receiving services alleges the previously established father is not the biological father.⁵² Previously, the DHS was permitted to order genetic testing only in cases where paternity has not been established and was not mandated to order such testing.⁵³ Section 1 adds that genetic testing should not be performed when the child was adopted or conceived by artificial insemination.⁵⁴ This Section further clarifies and reorganizes the language in subsections (e) and (f) of Code section 19-7-43.⁵⁵

Section 1 also amends subsection (f) regarding who pays for paternity testing.⁵⁶ If one or both of the parties receive child support services under Code section 19-11-6, the DHS pays for the paternity test, subject to recoupment from the alleged father if paternity is established.⁵⁷ Previously, the applicant of services was not required to reimburse the DHS for the initial paternity test if paternity was not established but had to pay for any subsequent testing.⁵⁸ Now, if the first test excludes the alleged father as the biological father, the applicant for services must reimburse the DHS for the cost of the initial test and any subsequent testing.⁵⁹

Finally, Section 1 of the Act adds penalties for failure to participate in genetic testing.⁶⁰ Specifically, any party who fails to cooperate with paternity testing, including failure to provide the child for testing, may be sanctioned by the DHS.⁶¹ Sanctions can include

51. 2015 Ga. Laws 1433, § 1, at 1434.

52. See O.C.G.A. § 19-7-43(e) (2015).

53. 1997 Ga. Laws 1613, § 17, at 1631 (formerly found at O.C.G.A. § 19-7-43 (2010)).

54. O.C.G.A. § 19-7-43(e) (2015).

55. See O.C.G.A. §§ 19-7-43(e)–(f) (2015).

56. O.C.G.A. § 19-7-43(f) (2015).

57. *Id.*

58. 1997 Ga. Laws 1613, § 17, at 1631 (formerly found at O.C.G.A. § 19-7-43 (2010)).

59. O.C.G.A. § 19-7-43(f) (2015).

60. *Id.*

61. *Id.*

the loss of the opportunity to dispute paternity, loss of state benefits and services, and closure of the child support collections case.⁶² The DHS may also petition for contempt if the failure to participate is in violation of a court order.⁶³

Section 2 – Relating to Genetic Testing

Section 2 of the Act amends Code section 19-7-45 relating to genetic testing requirements.⁶⁴ This Section clarifies that all genetic tests must meet the standards that the American Association of Blood Banks requires for results to be admitted into evidence in a court of law.⁶⁵ The Act adds a new subsection (e) to Code section 19-7-45, regarding privacy of genetic testing results and genetic material.⁶⁶ The Act forbids the DHS and any court issuing an order of paternity from attaching written genetic testing results to any pleading or court order, insofar as possible.⁶⁷ The Act requires the destruction of all genetic material within a reasonable time⁶⁸—which is to be established by a DHS rule⁶⁹—and states that genetic material shall not be shared with any other person or entity.⁷⁰ Finally, Section 2 further clarifies and reorganizes the language in subsection (a) and (c) of the Code section.⁷¹

Section 3 – Relating to Motions to Set Aside Paternity Determinations

Section 3 of the Act amends Code section 19-7-54 “relating to motions to set aside determinations of paternity.”⁷² The Act adds a new subsection (d) to Code section 19-7-54, allowing a party to request genetic testing from the DHS where the DHS, or a court of

62. *Id.*

63. *Id.*

64. 2015 Ga. Laws 1433, § 2, at 1435.

65. O.C.G.A. § 19-7-45(a) (2015).

66. O.C.G.A. § 19-7-45(e) (2015).

67. O.C.G.A. § 19-7-45(e)(1) (2015).

68. O.C.G.A. § 19-7-45(e)(2) (2015).

69. *Id.*

70. O.C.G.A. §§ 19-7-45(e)(3) (2015).

71. See O.C.G.A. §§ 19-7-45(a), (c) (2015).

72. 2015 Ga. Laws 1433, § 3, at 1436.

this state, issued a child support order.⁷³ The requesting party must pay for the testing.⁷⁴ If the child's custodian does not consent to testing, the Act allows a movant to petition for testing in court.⁷⁵

The Act re-designates former subsection (d) as new subsection (e) and adds additional language.⁷⁶ This Section adds that if the DHS obtained the underlying child support order, a court granting a motion to set aside paternity may relieve the obligor of any past and future monies owed to the state and any other person or entity who received notice of the action.⁷⁷ The DHS must be made a party to the motion to set aside paternity in order for the party to be relieved of his or her obligations.⁷⁸

Analysis

Practical Considerations

Although the Act passed unopposed, individuals involved in the implementation of the Act voiced concerns about its practical considerations, including (1) the ability to pay for testing, (2) DHS's ability to control the destruction of genetic material, and (3) a court's ability to verify paternity test results.⁷⁹

(1) The Ability to Pay for Testing

DHS field agent Donna George is on the front line of securing child support payments for families in need.⁸⁰ According to Ms. George, a majority of the DHS's child support establishment cases involve single mothers who must secure child support payments prior to receiving state benefits, like Temporary Assistance for Needy

73. O.C.G.A. § 19-7-54(d) (2015).

74. *Id.*

75. *Id.*

76. O.C.G.A. § 19-7-54(e) (2015).

77. *Id.*

78. *Id.*

79. See Telephone Interview with Patrick Woodard, Judge, Office of State Admin. Hearings, and Donna George, Agent, Ga. Dep't of Human Servs. (June 12, 2015) [hereinafter George & Woodard Interview].

80. *Id.*

Families (TANF) and Food Stamps.⁸¹ Genetic testing currently costs \$29.65 per person, making the cost of genetic testing for a mother, father, and child \$88.95.⁸² When paternity is not established with the original alleged father, the mother must pay for both the initial test and the second test, resulting in a \$177.90 fee, or face denial of benefits.⁸³ Ms. George fears that mothers who are reliant on public assistance to feed their families may not be able to pay such a lofty fee.⁸⁴

Administrative Law Judge Patrick Woodard suggests that the genetic testing fee is minimal compared to the amount of public benefits that applicants stand to lose.⁸⁵ Judge Woodard concluded that the fees would not pose a barrier for most applicants.⁸⁶ The DHS itself could also resolve this problem by allowing individuals to pay the fee using a payment plan, as they typically allow for other types of reimbursements, like overpayments of food stamps.⁸⁷ This concern is also curtailed by the fact that the majority of fathers tested are established as biological fathers, so relatively few women will face reimbursing the cost of the test.⁸⁸

(2) The DHS's Ability to Control the Destruction of Genetic Material

The DHS does not perform genetic testing; rather, it contracts with an outside company to do so.⁸⁹ Therefore, the DHS may have difficulty enforcing the Act's requirement regarding the destruction of genetic material and must promulgate rules for establishing such a system.⁹⁰

81. *Id.* DHS requires applicants for public assistance to establish child support in order to reduce reliance on state funds. *Id.* Child support payments reduce the overall amount of benefits that individuals receive. *Id.*

82. DIV. OF CHILD SUPPORT SERVS., PATERNITY ESTABLISHMENT, <http://dcss.dhs.georgia.gov/paternity-establishment> (last visited Nov. 4, 2015) [hereinafter DCSS, PATERNITY ESTABLISHMENT].

83. See O.C.G.A. § 19-7-43(f) (2015); DCSS, PATERNITY ESTABLISHMENT, *supra* note 82.

84. George & Woodard Interview, *supra* note 79.

85. *Id.*

86. *Id.*

87. *Id.*

88. See *id.*

89. *Id.*

90. George & Woodard Interview, *supra* note 79.

(3) A Court's Ability to Verify Paternity Results

Prior to the Act, DHS agents sent the written results of a paternity test to the court establishing paternity.⁹¹ The written DNA test report listed the names of the parties, the case number, and a percentage of the probability of paternity.⁹² Without the written results, courts had to rely solely on DHS agents to provide accurate information.⁹³ Judge Woodard also voiced concern about a future court's ability to uphold a paternity establishment without the written test results.⁹⁴

Other Concerns

Although legislators sought to exonerate wrongfully named fathers by passing the Act, it could be perceived as punishing mothers who do not know who fathered their child.⁹⁵ Fathers stand to gain from contesting paternity, and motivations to contest paternity range from truly questioning the paternity of a child to slowing down the child support process.⁹⁶ Mothers, on the other hand, have little incentive to ask the DHS to test a man who is not the biological father because applicants face reimbursement consequences.⁹⁷ Therefore, some mothers may find the reimbursement requirement unduly punitive.⁹⁸

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91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. George & Woodard Interview, *supra* note 79.

97. *Id.*

98. *Id.*

